

HON. JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENDRA L. BOSTWICK and TODD M.
BOSTWICK, together with their marital
community,

Plaintiffs,

v.

WHATCOM HUMANE SOCIETY, a non-
profit organization; LAURA CLARK,
together with her marital community;
WHATCOM COUNTY, WASHINGTON, a
government entity,

Defendants.

Case No. 2:18-cv-00298 JLR

STIPULATION GRANTING LEAVE OF
COURT ALLOWING DEFENDANTS
WHATCOM HUMANE SOCIETY, AND
LAURA CLARK TO FILE AN AMENDED
ANSWER TO COMPLAINT AND
ORDER THEREON
[FRCP 15]

IT IS HEREBY STIPULATED by and between the parties hereto and their counsel of
record that the Answer by WHATCOM HUMANE SOCIETY and LAURA CLARK be
amended as follows:

Based upon discovery of a clerical/ministerial error in the filed Answer, new
paragraph 11 shall be inserted as follows:

11. Admit the first sentence. The second sentence is not directed to this answering
defendant, therefore no response is required.

The remaining paragraphs of the current Answer shall be moved down numerically and resubmitted without any change. The proposed Amended Answer is appended hereto as "Exhibit 1."

DATED this 25th day of June, 2018.

DATED this 25th day of June, 2018.

BULLIVANT HOUSER BAILEY PC

BUTLER BESCHEN LAW PLLC

/s/ Wilhelm Dingler

/s/ Emily C. Beschen

Wilhelm Dingler, WSBA #13474

Emily C. Beschen, WSBA#43813

1700 Seventh Ave., Ste. 1810

103 E. Holly Street, Ste. 512

Seattle, WA 98101-1397

Bellingham, WA 98225

(206) 292-8930 | Phone

(360) 734-3448 | Phone

E-mail: wilhem.dingler@bullivant.com

E-mail: emily@rdbutlerlaw.com

Attorneys for Defendants Whatcom Humane Society, Laura Clark and Defendant Whatcom County

Attorney for Plaintiffs Kendra L. Bostwick and Todd M. Bostwick

DATED this 25th day of June, 2018.

ROY, SIMMONS, SMITH & PARSONS,
PS

/s/ Jill Smith

Jill Smith, WSBA #30645

1223 Commercial Street

Bellingham, WA 98225

(360) 752-2000 | Phone

E-mail: Jill@royandsimmons.com

Attorney for Defendants Whatcom Humane Society and Laura Clark


ORDER

This matter having come before the Court on the stipulation of the parties to permit Defendants Whatcom Humane Society and Laura Clark to file an amended answer to the complaint herein, and the Court being otherwise duly and fully advised in the premises, it is hereby,

1 ORDERED, ADJUDGED and DECREED that the stipulation is approved and the

2 *Whatcom Humane Society and Laura Clark are directed to file the*
~~Clerk is directed to accept~~ proposed Amended Answer ("Exhibit 1") ~~for filing.~~

3
4 June 26, 2018


HONORABLE JAMES L. ROBART
United States District Court Judge

5
6
7 Presented by:

8 BULLIVANT HOUSER BAILEY PC

BUTLER BESCHEN LAW PLLC

9
10 /s/ Wilhelm Dingler

11 Wilhelm Dingler, WSBA #13474

12 1700 Seventh Ave., Ste. 1810

13 Seattle, WA 98101-1397

(206) 292-8930 | Phone

E-mail: wilhem.dingler@bullivant.com

/s/ Emily C. Beschen

Emily C. Beschen, WSBA#43813

103 E. Holly Street, Ste. 512

Bellingham, WA 98225

(360) 734-3448 | Phone

E-mail: emily@rdbutlerlaw.com

14 *Attorneys for Defendants Whatcom Humane*
15 *Society, Laura Clark and Defendant*
16 *Whatcom County*

Attorney for Plaintiffs Kendra L. Bostwick
and Todd M. Bostwick

17 ROY, SIMMONS, SMITH & PARSONS,
PS

18 /s/ Jill Smith

19 Jill Smith, WSBA #30645

1223 Commercial Street

20 Bellingham, WA 98225

(360) 752-2000 | Phone

21 E-mail: Jill@royandsimmons.com

22 *Attorney for Defendants Whatcom Humane*
23 *Society and Laura Clark*

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2018, I caused to be delivered as indicated below a copy of the foregoing to the following counsel of record:

Emily C. Beschen
Robert D. Butler
BUTLER BESCHEN LAW PLLC
103 E. Holly Street, Ste. 512
Bellingham, WA 98225
(360) 734-3448 | Phone
E-mail: emily@rdbutlerlaw.com
bob@rdbutlerlaw.com

Jill Smith
ROY, SIMMONS, SMITH & PARSONS,
PS
1223 Commercial Street
Bellingham, WA 98225
(360) 752-2000 | Phone
E-mail: Jill@royandsimmons.com

Attorneys for Plaintiffs Kendra L. Bostwick and Todd M. Bostwick
Attorneys for Defendants Whatcom Humane Society, Laura Clark and Rebecca Crowley

☐ U.S. Mail
☐ E-mail
☒ E-service
☐ Messenger

/s/ Deborah Messer

Deborah Messer, Legal Assistant

4833-3755-0443.1

EXHIBIT 1

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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Defendants.

No.: 2:18-cv-00298 JLR

AMENDED ANSWER OF DEFENDANT
WHATCOM HUMANE SOCIETY AND
LAURA CLARK

COMES Now Defendants Whatcom Humane Society and Laura Clark, hereinafter,
Defendants, and answers the Plaintiffs' Complaint as follows:

JURISDICTION

1. Admit.

VENUE

2. Admit.

PARTIES

3. Admit on information and belief.

1 4. Admit.

2 5. Admit.

3 6. Admit.

4 **FACTS**

5 7. Admit on information and belief.

6 8. Admit first and second sentences. Deny third and fourth sentences.

7 9. Admit first sentence. Second sentence is not directed at these answering defendants,
therefore no response is required.

8 10. Deny. All WHS Animal Control Officers held limited commissions from the
9 Bellingham Police Department (and had these commissions at the time the
10 Bostwick incidents took place). In addition, various Whatcom Humane Society
11 Animal Control Officers had formerly held a lawful commission under RCW
12 16.52.025, from Whatcom County Superior Court, which had inadvertently lapsed
at the time the Bostwick incidents took place. ACO Crowley had been
13 commissioned by Bellingham and had the requisite skills, training and experience to
be commissioned by Whatcom County Superior Court.

14 11. Admit the first sentence. The second sentence is not directed to this answering
defendant, therefore no response is required.

15 12. Not directed to this answering defendant, therefore no response required. By way of
16 clarification, Whatcom Humane Society Animal Control Officers have historically
17 received their training through either the intensive two-week, 80 hour Animal
Control Officer Academy, instructed by Criminal Justice Training Center
18 instructors, in Burien, WA (course includes 80 hours of instruction), or National
Animal Control Academy (40 initial hours of instruction), both of which include
19 instruction on search and seizure law. As relevant here, ACO Crowley completed
the WACA 80-hour course in 2012 and has received consistent "continuing
20 education," including but not limited to trainings offered by Whatcom County.

21 13. Admit the first sentence. Deny the second sentence. In their August 11, 2016
22 application for a warrant, assisted by Prosecutor George Roche, and ruled on by
Commissioner Anthony Parise, ACO Jensen and ACO Crowley provided sufficient
23 facts and evidence to support issuance of a warrant. Constitutional safeguards
(federal and state) are met when the affidavit supporting a search warrant contains
24 the name and address of the citizen-informant who was a witness to criminal
activity and includes a statement of the underlying circumstances.

25 14. Deny the first sentence. On August 11, 2016, ACO Crowley and ACO Jensen
26 approached plaintiff's home, knocked, and then remained outside the garage door

area where they could see the emaciated dog, Bosco, in the garage through the garage door window. They could hear his whining from outside the closed garage. The presence of an officer within the curtilage of a residence does not amount to an unconstitutional search. An officer is permitted the same license to intrude as a reasonably respectful citizen. ACO Crowley and ACO Jensen did not make any substantial or unreasonable departure from such an area, nor engage in any particularly intrusive method of viewing. Admit second sentence. As to third sentence, not directed to these answering defendants, therefore no response is required.

15. Deny the first and second sentences. Partially admit third and fourth sentences, in that, more than a week after his seizure, plaintiffs attempted to require Whatcom Humane Society to feed Bosco food that was not within his veterinarian's recommended diet. WHS staff veterinarian Dr. Karen Rounds had already consulted with last veterinarian of record, Mountain Veterinary Clinic, regarding Bosco's previous care, and formulated a treatment/feeding plan including special prescription diet, raised feeder and medicine. The food provided by plaintiffs was not within the recommended diet or care plan.

16. Admit first, second and third sentence. As to fourth sentence, Bosco's pre-existing medical condition caused him, on September 3, to become lethargic, unable to rise, have deeply sunken eye globes, to be dehydrated, to have an unsteady/ataxic gait, to have bloody diarrhea, to have tremendously elevated liver values, and to be "clearly deteriorating." As a result, he was euthanized on the recommendation of independent veterinarian, Becky Callihan, DVM, of Animal Emergency Care.

CLAIM I

(Violation of Civil Rights: Unlawful Forfeiture of Property)

17. Answering defendants incorporate all responses to Paragraphs 1-16, above.

18. Deny.

CLAIM II

(Violation of Civil Rights: Unlawful Seizure of Property)

19. Answering defendants incorporate all responses to Paragraphs 1-18, above.

20. Deny.

CLAIM III

(Conversion of Dog)

21. Answering defendants incorporate all responses to Paragraphs 1-20, above.

22. Deny.

CLAIM IV

(Trespass to Chattel)

23. Answering defendants incorporate all responses to Paragraphs 1-22, above.

24. Deny.

CLAIM V

(Intentional Infliction of Emotional Distress-Outrage)

25. Answering defendants incorporate all responses to Paragraphs 1-24, above.

26. Deny.

CLAIM VI

(Negligent Infliction of Emotional Distress)

27. Answering defendants incorporate all responses to Paragraphs 1-26, above.

28. Deny.

CLAIM VII

(Trespass to Land)

29. Answering defendants incorporate all responses to Paragraphs 1-28, above.

30. Deny.

CLAIM VIII

(Negligent Training)

31. Answering defendants incorporate all responses to Paragraphs 1-30, above.

32. Deny.

CLAIM IX

(Negligent Supervision)

33. Answering defendants incorporate all responses to Paragraphs 1-32, above.

34. Deny.

CLAIM X

(Private Nuisance – RCW 7.48.150)

35. Answering defendants incorporate all responses to Paragraphs 1-34, above.

36. Deny.

CLAIM XI

(Negligent Care of Bosco / Animal Cruelty – RCW 16.52)

37. Answering defendants incorporate all responses to Paragraphs 1-36, above.

38. Deny.

CLAIM XII

(Violation of Washington State Constitution Article 1, Section 7)

39. Answering defendants incorporate all responses to Paragraphs 1-38, above.

1 40. Deny.

2 BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSE, Defendants
3 allege the following:

- 4 1. As to 42 USC 1983 claims, the alleged injury was not performed under color of a
5 policy or custom or usage of the Whatcom Humane Society, nor did the Whatcom
6 Humane Society adopt a course of action tailored to this particular seizure.
- 7 2. As to 42 USC 1983 claims, no deliberate choice to follow a course of action, made
8 from among various alternatives by the official or officials responsible for
9 establishing final policy with respect to the subject matter in question.
- 10 3. As to 42 USC 1983 claims against Laura Clark, qualified immunity based on the
11 good faith of the individual officials who made the decision to proceed with the
12 seizures here at issue, as well as the euthanization.
- 13 4. Reasonable reliance upon the independent professional veterinary advice of Becky
14 Callihan, DVM, of Animal Emergency Care, as to the need for euthanization.
- 15 5. The underlying factual assertions of ACO Jensen in support of her Case
16 Summary/Probable Cause Statement of August 11, 2016 established probable cause
17 for issuance of a warrant under Cr R 2.3(c).
- 18 6. ACO Jensen and ACO Crowley held valid commissions from the City of
19 Bellingham at the time of issuance of this warrant and seizure.
- 20 7. Any procedural deficiencies in ACO Jensen/ACO Crowley's commission status
21 were cured by the August 11, 2016 participation of commissioned law enforcement
22 officers Mark Jilk and trainee Laughlin of the Whatcom County Sheriff's Office.
23 Whatcom County Sheriff's Officers made the initial contact with plaintiff Bostwick
24 by telephone on August 11, 2016 and requested her return to the residence.
- 25 8. As to conversion, lack of willfulness.
- 26 9. Probable cause for issuance of warrant.
10. Good faith belief in validity of warrant for seizure.
11. As to Intentional Infliction of Emotional Distress, failure to state a claim.
12. As to Negligent Infliction of Emotional Distress, failure to state a claim
13. As to trespass, no entry beyond the curtilage.

- 1 14. As to Washington Constitution, Article 1, Section 7, lawful vantage point.
- 2 15. Privilege to act.
- 3 16. Unclean hands.
- 4 17. Plaintiffs have unclean hands as to the medical and dietary condition of Bosco as of
- 5 August 2017.
- 6 18. Plaintiffs were contributorily negligence as to the medical and dietary condition of
- 7 Bosco as of August 2017.
- 8 19. The cause of Bosco's emergency euthanasia was due to systemic organ failure. His
- 9 condition was an intervening or supervening cause that cuts off any alleged
- 10 negligence by these answering defendants.
- 11 20. Defense of necessity.
- 12 21. The acts complained of herein may have been authorized under RCW Chapter
- 13 10.93, the Washington Mutual Aid Peace Officers Powers Act.
- 14 22. RCW 16.52.085
- 15 23. RCW 16.52.100

16 WHEREFORE, Defendants prays that Plaintiffs' Complaint be dismissed with
17 prejudice and that Defendants be awarded judgment for their costs. Alternatively, Defendant
18 prays for apportionment between at fault parties pursuant to RCW 4.22 et seq.

19 DATED this ____ day of _____, 2018.

20 ROY, SIMMONS, SMITH & PARSONS, BULLIVANT HOUSER BAILEY PC
21 P.S.

22
23 By: /s/ Jill Smith
24 Jill Smith, WSBA #30645
25 Attorneys for Defendants Whatcom
26 Humane Society and Clark
mail@royandsimmons.com
Jill@royandsimmons.com

By: /s/ William Dingler
Wilhelm Dingler, WSBA #13474
Attorneys for Defendants Whatcom
Humane Society and Clark
Wilhelm.dingler@bullivant.cm

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2018, I caused to be delivered as indicated below a copy of the foregoing to the following counsel of record:

Emily C. Beschen
Robert D. Butler
BUTLER BESCHEN LAW PLLC
103 E. Holly Street, Ste. 512
Bellingham, WA 98225
(360) 734-3448 | Phone
E-mail: emily@rdbutlerlaw.com
bob@rdbutlerlaw.com

Jill Smith
ROY, SIMMONS, SMITH & PARSONS,
PS
1223 Commercial Street
Bellingham, WA 98225
(360) 752-2000 | Phone
E-mail: Jill@royandsimmons.com

*Attorneys for Plaintiffs Kendra L. Bostwick
and Todd M. Bostwick*

*Attorneys for Defendants Whatcom Humane
Society and Laura Clark*

☐ U.S. Mail
☐ E-mail
☒ E-service
☐ Messenger

/s/ _____

4848-8100-1323.1